

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PARKSIDE BUILDING COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-164

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of respondent's Sections 8.02(3) and 8.05(1) of Regulation I, having come on regularly for formal hearing on March 8, 1982, at Seattle-Tacoma International Airport, and appellant appeared by its employee Harry M. Gilmartin and respondent represented by its attorney Keith D. McGoffin, with Administrative Law Judge William A. Harrison presiding, and the Board having reviewed the Proposed Order of the presiding officer mailed to the parties on the 20th day of April, 1982, and more than twenty days having elapsed

1 from said service; and

2 The Board having received no exceptions to said Proposed Order
3 and the Board being fully advised in the premises, NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 20th day of April, 1982, and incorporated by reference herein and
7 attached hereto as Exhibit A, are adopted and hereby entered as the
8 Board's Final Findings of Fact, Conclusions of Law and Order herein.

9 DONE this 3rd day of June, 1982.

10 POLLUTION CONTROL HEARINGS BOARD

11
12 David Akana
13 DAVID AKANA, Lawyer Member

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15 Nat W. Washington
16 NAT W. WASHINGTON, Chairman

17
18 Gayle Rothrock
19 GAYLE ROTHROCK, Vice Chairman

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21 William A. Harrison
22 WILLIAM A. HARRISON
23 Administrative Law Judge

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27 CONCLUSIONS OF LAW & ORDER
PCHB No. 81-164

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IN THE MATTER OF
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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of respondent's Sections 8.02(3) and 8.05(1) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Nat W. Washington, Chairman, at Seattle-Tacoma International Airport on March 8, 1982. Administrative Law Judge William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its employee Harry M. Gilmartin. Respondent appeared by its attorney, Keith D. McGoffin.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were examined. From
2 testimony heard and exhibits examined, the Pollution Control Hearings
3 Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent pursuant to RCW 43.21B.260 has filed with this Board a
7 certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto, of which official notice is hereby taken.

9 II

10 This case concerns a rubbish pile maintained by appellant Parkside
11 Building Company (Parkside). The pile has been a regular feature of
12 the landscape within Pacific Estates, a residential development which
13 Parkside is undertaking in Redmond.

14 III

15 The pile is on land owned by Parkside and consists of the debris
16 from home construction. Parkside ceased burning the debris in April,
17 1981, when respondent imposed a \$250 civil penalty for the burning,
18 which Parkside paid.

19 IV

20 Respondent's inspector visited the fire site in June, July and
21 August, 1981, each time observing 1) dead ashes and 2) an ever growing
22 rubbish pile of construction debris placed by Parkside. Parkside's
23 intent was to haul this away "when enough accumulated." The site is
24 open and accessible to any passer-by or resident.

25
26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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V

Sometime between September 8, and 14, 1981, an unknown person set fire to the rubbish pile which burned to ashes again. Respondent issued a Notice and Order of Civil Penalty to Parkside assessing two \$250 civil penalties (totaling \$500) for violation of Sections 8.02(3) and 8.05(1) of the outdoor fire rules in respondent's Regulation I. From this, Parkside appeals.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

Both Section 8.02(3) (relating to prohibited materials) and Section 8.05(1) (relating to the requirement of prior written approval from respondent) provide that:

It shall be unlawful for any person to cause or allow outdoor fire... (emphasis added).

II

Section 8.04(b) provides:

It shall be prima facie evidence that the person who owns or controls property on which an outdoor fire occurs has caused or allowed said outdoor fire.

This presumption aids the respondent in carrying its burden to prove, by a preponderance of the evidence, that the person in question caused or allowed the outdoor fire. Yet this presumption is not irrebuttable.

1 III

2 In this case, the evidence will support a conclusion that the fire
3 was ignited by a trespassing third party as easily as a conclusion
4 that the fire was ignited by Parkside. The violation and civil
5 penalties should therefore be reversed.

6 IV

7 The occurrence of the September fire in question places Parkside
8 on notice that, if it did not ignite the fire, a trespassing third
9 party did. This notice now creates a duty to take reasonable
10 precautions to prevent unauthorized ignition of the rubbish pile. B&M
11 Food Stores, Inc., v. PSPACA, PCHB 1047 (1977). Chief among such
12 precautions would be the prompt removal of the construction debris so
13 that no rubbish pile persists, in plain view, on a bed of ashes, to
14 invite ignition by persons unknown. A subsequent fire of the very
15 same nature as this one may therefore result in a different
16 disposition.

17 V

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

20 From these Conclusions the Board enters this

ORDER

The two violations and two \$250 civil penalties (totaling \$500) are each hereby reversed.

DONE at Lacey, Washington this 20th day of April, 1982.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge